

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 28, 2010 Session

JOANN DAVIS v. HARWELL ENTERPRISES

**Appeal from the Chancery Court for Giles County
No. 3861 Robert L. Holloway, Chancellor**

**No. M2009-02145-WC-R9-WC - Mailed - September 21, 2010
Filed - November 29, 2010**

This appeal involves the application of the statute of limitations in Tenn. Code Ann. § 50-6-203(g)(2)(B) (2008) to a suit for workers' compensation benefits. An employee who sustained a compensable injury and who received authorized medical treatment filed a civil action in the Chancery Court for Giles County more than one year after the last payment of medical benefits. Her employer filed a "special motion to dismiss" on the ground that the suit was time-barred. The trial court, relying on the discovery rule, denied the motion on the ground that the limitations period did not begin to run until the employee's attorney received a letter from her treating physician stating that her injury was work-related. The Tennessee Supreme Court granted the employer permission to appeal under Tenn. R. App. P. 9 and referred the appeal to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Sup. Ct. R. 51 for hearing and a report of findings of fact and conclusions of law. We have determined that the statute of limitations bars the employee's complaint and, therefore, reverse the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery Court Reversed

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which JON KERRY BLACKWOOD and WALTER C. KURTZ, SR. JJ., joined.

W. Stuart Scott, Nashville, Tennessee, for the appellant, Harwell Enterprises.

Robert D. Massey, Pulaski, Tennessee, for the appellee, Joann Davis.

MEMORANDUM OPINION

I.

Joann Davis was injured at work on June 3, 2005, when she fell down some stairs. She reported the incident to her employer, Harwell Enterprises. Because Ms. Davis was complaining of neck and shoulder pain, Harwell Enterprises provided her with a panel of physicians. Ms. Davis selected Dr. Jeffrey W. Cook who diagnosed her with lumbar strain. On January 6, 2006, Dr. Cook determined that Ms. Davis had reached maximum medical improvement and assigned her a zero percent (0%) permanent anatomical impairment.

On May 9, 2006, Ms. Davis was examined by Dr. Michael Kioschos, an orthopaedic surgeon, regarding the pain in her left shoulder. Dr. Kioschos diagnosed Ms. Davis with “[l]eft shoulder osteoarthritis, rotator cuff tear, [and] chronic pain” and recommended shoulder replacement and rotator cuff repair surgery. His treatment notes state that “[w]e will get this approved through [workers’] compensation and she will follow up here for a physical examination prior to the surgical procedure.” While the record is silent regarding how Ms. Davis was referred to Dr. Kioschos, Harwell Enterprises paid for Ms. Davis’s May 9, 2006 office visit by a check issued on May 31, 2006. Harwell Enterprises paid no other medical or disability benefits to Ms. Davis or on her behalf.

Ms. Davis submitted a request for assistance to the Tennessee Department of Labor and Workforce Development (“Department”). On July 27, 2006, a workers’ compensation specialist issued a benefit review report and an order denying benefits. Both the report and the order stated that Ms. Davis’s claim for medical benefits with regard to her proposed shoulder replacement surgery were denied.

On July 31, 2006, four days after the Department denied Ms. Davis’s claim for medical benefits, Dr. Kioschos performed the shoulder replacement surgery on Ms. Davis. Approximately three months later, on October 9, 2006, Ms. Davis’s lawyer requested Dr. Kioschos’s opinion regarding whether Ms. Davis’s shoulder injury was work-related. On February 16, 2007, Dr. Kioschos faxed Ms. Davis’s lawyer a Form C-32 stating that Ms. Davis’s left shoulder injury was “more probably than not” work-related.

On June 11, 2007, Ms. Davis filed suit in the Chancery Court for Giles County seeking workers’ compensation benefits from Harwell Enterprises and its workers’ compensation insurance carrier. Harwell Enterprises filed a “special motion to dismiss” asserting that Ms. Davis’s suit was time-barred under Tenn. Code Ann. § 50-6-203(g)(2)(B) (2008) because it was filed more than one year after the last payment of benefits and because it had not been filed within ninety days of the Department’s July 27, 2006 benefit review

report and order. In response, Ms. Davis insisted that she did not discover that her shoulder injury was work-related until her lawyer received the faxed Form C-32 from Dr. Kioschos on February 16, 2007.

On May 30, 2008, the trial court filed an order denying Harwell Enterprises' "special motion to dismiss." The trial court concluded that (1) the discovery rule applies in workers' compensation cases, (2) Ms. Davis "discovered" that she sustained a compensable injury on or about February 16, 2007 – the date of Dr. Kioschos's fax, and, therefore, (3) Ms. Davis's "cause of action commenced to run when she was advised by her doctor that she more probably than not had a work related compensable injury." Thereafter, Harwell Enterprises obtained permission to pursue an interlocutory appeal pursuant to Tenn. R. App. P. 9.

II.

The material facts in this case are undisputed. Accordingly, this appeal presents only questions of law. A trial court's conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 271 (Tenn. 2009); *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

III.

The "discovery rule" applicable to suits for workers' compensation benefits provides that the applicable statute of limitations "is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under the [workers'] compensation laws has been sustained." *Norton Co. v. Coffin*, 553 S.W.2d 751, 752 (Tenn. 1977). While the statute does not begin to run until the employee knows that he or she has been injured, *Bradford v. Dixie Mercerizing Co.*, 199 Tenn. 170, 172-73, 285 S.W.2d 136, 137 (1955), it is not tolled until the employee knows the full extent of his or her injury. *See Reed v. Genesco, Inc.*, 512 S.W.2d 1, 3 (Tenn. 1974).

Even though the statute of limitations is not tolled until the employee knows the full extent of his or her injury, this Court recognized in 1967 that the statute of limitations would be tolled while the employer provided medical services to the employee for the work-related injury. *Fields v. Lowe Furniture Corp.*, 220 Tenn. 212, 219, 415 S.W.2d 340, 343 (1967). This holding is now codified in Tenn. Code Ann. § 50-6-203(g)(2) which provides:

Notwithstanding subdivision (g)(1), in no event shall an employee have less than the latter of:

(A) One (1) year from the date of the accident resulting in injury; or

(B) One (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee in which to file a complaint with a court of competent jurisdiction, as provided in § 50-6-225.

The first question we must answer is when did Ms. Davis know, or when should she have known, that she had sustained an injury that was probably compensable. *See Reed v. Genesco, Inc.*, 512 S.W.2d at 3 (noting that the statute of limitations began to run when “a reasonable exercise of diligence . . . would have resulted in [the plaintiff] recognizing a probable compensable injury”). In most circumstances, an employee becomes aware that he or she has probably sustained a compensable injury either at the time the event causing the injury occurs or shortly thereafter. *See, e.g., Reed v. Genesco, Inc.*, 512 S.W.2d at 3. This case is no exception. Ms. Davis became aware that she had injured herself as soon as she fell on the stairs at work in 2005. Shortly thereafter, Harwell Enterprises acknowledged that she had sustained a work-related injury by agreeing to provide her with medical assistance.

Even if it could be argued that Ms. Davis was not aware of the full extent of her work-related injury until she was examined by Dr. Kioschos in May 2006, the evidence plainly shows that Dr. Kioschos told her that he would obtain approval for the required surgery through workers’ compensation. Accordingly, it is undisputed that, at the latest, Ms. Davis knew on May 9, 2006 that the shoulder injuries she sustained when she fell down the stairs at work were probably compensable under the Tennessee Workers’ Compensation Law.

This conclusion does not end the inquiry because Tenn. Code Ann. § 50-6-203(g)(2)(B) provides that the statute of limitations will not begin to run until the employee receives his or her last authorized medical treatment or until the employer stops making payments of workers’ compensation benefits. It is undisputed that Ms. Davis received her last authorized medical examination on May 9, 2006, and that Harwell Enterprises made its last payment for medical care related to Ms. Davis’s injury on May 31, 2006.

Consistent with Tenn. Code Ann. § 50-6-203(g)(2)(B), the one-year statute of limitations on Ms. Davis’s workers’ compensation claim began to run on May 31, 2006. It necessarily follows that Ms. Davis’s complaint for workers’ compensation benefits filed on June 11, 2007 was filed after the statute of limitations had expired. Therefore, the trial court erred by failing to dismiss Ms. Davis’s complaint.

IV.

We reverse the trial court's order denying Harwell Enterprises' motion to dismiss and remand the case to the trial court with directions to enter an order dismissing Ms. Davis's complaint. We also tax the costs of this appeal to Joann Davis for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUSTICE